



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMha13101560

██████████,
Complainant,

v.

COLWELL,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission (“Commission”), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On October 24, 2013, ██████████ (“Complainant”) filed a Complaint with the Commission against Colwell (“Respondent”) alleging discrimination on the basis of disability in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) ██████████

██████████ Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Respondent terminated Complainant because of his disability. In order to prevail, Complainant must show that: (1) he is a member of a protected class; (2) he suffered an adverse employment action; (3) he was meeting Respondent’s legitimate business expectations; and (4) Respondent treated similarly-situated employees without impairment more favorably under similar circumstances.

It is evident that Complainant has a disability as defined under the law. Further, while there is sufficient evidence that Complainant was meeting Respondent’s legitimate business expectations, Respondent terminated his employment on or about July 12, 2013.

By way of background, Leaders Staffing, a temporary placement agency, placed Complainant with Respondent on or about April 7, 2013. At all times relevant to the Complaint, Complainant worked



as a press operator and his duties included but were not limited to operating a press via instructions levied by supervision through a speaker located in his machine. Evidence shows that during the course of Complainant's employment, he had difficulty understanding the instructions through the speaker. Complainant asserts that he had difficulty hearing because of the ambient noise from the plant and because his supervisor's voice did not carry well. While Complainant made several mistakes during the course of his employment, Respondent admits that Complainant was generally a satisfactory employee. During the course of his employment, Respondent required Complainant to undergo a hearing examination. On or about July 10, 2013, Complainant submitted to a hearing examination and upon receiving the results on or about July 11, 2013, Respondent abruptly ended Complainant's work assignment. Specifically, in an email from Respondent's Human Resources Manager, Respondent admitted that the termination is "unfortunate because [Complainant] has done a good job, caught on quickly and was even moved to another position within the department based on his ability." The email continues, "it does make us wonder if he had worn a hearing support upon hire, since this has been a recent change." Lastly, the email admits that Respondent "would reconsider this decision if [Complainant] were able to get the necessary devices to improve his hearing." No evidence has been submitted by Respondent or uncovered during the investigation to show that Respondent attempted to enter into the interactive dialogue process in an attempt to ascertain an accommodation which may have assisted Complainant in maintaining his employment. Rather, Respondent simply terminated his employment. As such and based upon the aforementioned, probable cause exists to believe that an unlawful discriminatory practice occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

October 17, 2014

Date

Akia A. Haynes

Akia A. Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission